XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. App. 1051 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.1051/2002

APPELLANTS

1. Mandvi Mooka s/o Mandvi Deva, aged 37 years,
2. Markam Mara, s/o Deva Muriya, aged 37 years.

Both residents of Toyapara, Gorgunda, Dornapal, District Dantewada(CG)

Versus

RESPONDENT

State of Chhattisgarh, Through Police Station Dornapal, District -Dantewada.

CRIMINAL APPEAL u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C BHADOO, J, & HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(27.09.2007)

L.C. Bhadoo, J:-

Shri K.K.Singh, Counsel for the appellants.

Smt. Anju Ahuja, Dy. Government Advocate for the State.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 19.8.2002, passed by the 4th Additional Sessions Judge(Fast Track Court), Bastar, Jagdalpur in Sessions Trial No.25/2001, whereby, the learned Additional Sessions Judge after holding the accused/appellants guilty for commission of the offence punishable under Section 302 read with Section 34 of the IPC, sentenced each of the accused/appellants to undergo imprisonment for life and to pay a fine of Rs.300/-, in default of payment of fine to further undergo R.I. for 6 months.

The case of the prosecution in brief is that on 16.12.2000, the deceased Madvi Hadma and his wife namely-Madvi Deve were working in their field and during those days, they used to reside in the agricultural field. On 16.12.2000, Madvi Hadma went to his house in the village, but he did not return in the night and on next day morning, brother of Madvi Deve namely-Madvi Handa came and informed that Madvi Hadma has been murdered by someone. On this, Madvi Deve, wife of the deceased went along with her brother -Madvi Handa on the spot and saw that the body of Madvi Hadma was lying on the pathway to the village from the field. Blood was present on the nostrils and there was an injury on the neck, therefore, they went to the village and informed to Patel, Upsarpanch. On coming to know this fact,

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

they came on the spot and thereafter, a village Panchayat was convened, in which, the accused/appellants namely-Mandvi Mooka and Markam Mara made extra judicial confession before the village Panchayat that they had committed murder of Madvi Hadma. Thereafter, the matter was reported in the Police Station Dornapal, whereupon, First Information Report Ex.P/1 was registered. Merg intimation was also lodged in the Police Station -Dornapal. After registering the case, the Investigating Officer left for the scene of occurrence and after giving notices (Ex.P/5) to the Panchas, prepared inquest (Ex.P/6) on the body of the deceased. He prepared Site Plan under Ex.-P/8 of the place of occurrence. While in police custody, accused/appellant-Mandvi Mooka gave memorandum (Ex.-P/14) regarding the place, where the wood was kept, by which, the neck of the deceased was pressed. In pursuance of that, the wood was recovered at the instance of the accused/appellant-Mandvi Mooka under Ex.P/15. Body of Madvi Hadma was sent for postmortem examination to the Primary Health Centre, Dornapal, where, Dr. Uttam Kaushik (PW-3) conducted the postmortem on the body of the deceased and opined that the cause of death was sudden cardio respiratory arrest due to fracture and dislocation of 2nd and 3rd vertebra along with dislocation of apiglotis and the injuries were ante-mortem in nature. He prepared postmortem report (Ex.-P/2).

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Sukma, District Dantewada, who in turn, committed the case to the Sessions Judge, Jagdalpur from where the learned Additional Sessions Judge(FTC), Bastar, Jagdalpur received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellants examined 5 witnesses. The statements of the accused/appellants were recorded under Section 313 of the Code of Criminal Procedure, in which, they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been implicated in a false case. The accused persons also denied making any extra judicial confession.

Learned Additional Sessions Judge after hearing the counsel for respective parties, convicted and sentenced the accused/appellants as aforementioned.

We have heard Shri K.K.Singh, learned counsel for the appellants and Smt. Anju Ahuja, learned Dy. Government Advocate for the State.

In this case, there is no ocular or direct evidence to the incident. The whole case rests on the extra judicial confession made by the accused/appellants before the village Panchayat. In order to rest the conviction on the extra judicial confession, the prosecution is required to prove that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the extra judicial confession made by the accused/appellants was voluntary, true and prompt.

To establish the extra judicial confession, prosecution has examined PW-1- Rajesh Kumar Nayak, who has stated that in the Panchayat, Mandvi Mooka stated that he along with Markam Mara committed murder of Madvi Hadma. He also stated that he committed the murder on account of land dispute between him and the deceased. In the cross-examination, he had stated that the accused persons were mum, but wife of the deceased threatened the accused/appellants. On saying by Madvi Deve that the accused/ appellants must have committed murder of Madvi Hadma, considering Deve's statement, the village Panchayat pressurized and enquired from the accused/appellant about the said incident and thereafter, they made the extra judicial confession.

PW-2- Madvi Deve, wife of the deceased has also stated that the accused/appellant – Mandvi Mooka made extra judicial confession that on account of land dispute, he committed the murder of his brother- Madvi Hadma, he also stated that he committed the murder at about 5-6 p.m. In para 5 of her cross-examination, she has stated that the Panchayat was not convened in the village. After seeing the body of the deceased, it was decided to convene the Panchayat. It is stated by her that when the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused/appellants were pressurized and given beating by the villagers, then only they made extra judicial confession.

PW-4 – Betti Ganga has turned hostile, therefore, on perusal and scrutiny of the evidence of PW-1 Rajesh Kumar Nayak and PW-2 – Madvi Deve, it has come on record that in the first instance, their evidence disclosed that only the accused/appellant Mandvi Mooka made extra judicial confession and there is no evidence that the accused/appellant- Markam Mara made any extra judicial confession, therefore, as far as Markam Mara is concerned, there is no iota of evidence on record regarding his extra judicial confession before the village Panchayat.

As far as extra judicial confession made by the accused/appellant Mandvi Mooka is concerned, both the witnesses namely- PW-1 Rajesh Kumar Nayak and PW-2 – Madvi Deve have stated that on being pressurizing, threatening and beating by the villagers, the accused/appellant-Mandvi Mooka had made extra judicial confession before the village Panchayat. Therefore, the said extra judicial confession cannot be termed to be voluntary because, the same was made only after threatening. Even the wife of the deceased-Madvi Deve has stated that the accused was threatened and beaten, and thereafter, he made the extra judicial confession. The so called extra judicial confession made by the accused/appellant Mandvi Mooka

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was not voluntary and based on this, the conviction cannot be rest.

There is no evidence and material on record to corroborate the said extra judicial confession of the accused, as such the prosecution has utterly failed to establish the fact that the accused/appellants are the persons, who committed the murder of the deceased, therefore, the finding of the trial court, convicting and sentencing the accused/appellants for the offence under Section 302 read with Section 34 of IPC for committing the murder of Madvi Hadma, cannot be sustained.

In the result, the appeal succeeds and the conviction and sentence imposed upon the accused/ appellants namely- Mandvi Mooka and Markam Mara under Section 302 read with Section 34 of IPC are set aside. They are acquitted of the above charge. It is stated that the accused/appellants are in detention since 20.12.2000, therefore, they be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

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